

ASSEMBLY BILL

No. 1557

Introduced by Assembly Member Hancock

February 21, 2003

An act to amend Section 6108 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1557, as introduced, Hancock. Public contracts: sweatshop labor.

Existing law requires state agencies to provide in every contract for procurement of equipment, materials, or supplies, other than procurement related to a public works contract, that the contractor certify that no foreign-made equipment, materials, or supplies provided under contract are produced by forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit thereof.

This bill would expand the prohibition to public works contracts, delete the foreign-made restriction, include garments as a subject of procurements, impose new requirements upon contractors including a code of conduct, expand the definition of state agency, provide for a contracting preference, and make legislative findings and declarations in connection therewith. This bill would also impose a state-mandated local program by requiring contractors to ensure that their subcontractors comply in writing with a specified code of conduct, under penalty of perjury.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislation finds and declares:

2 (a) The State of California spends millions in public funds on
3 garments, uniforms, materials, and supplies provided by private
4 bidders, vendors, and contractors.

5 (b) The state recognizes a public interest in avoiding subsidies
6 to bidders and contractors whose workplaces represent sweatshop
7 conditions, including violation of recognized standards of wages,
8 workplace health and safety, child labor, nondiscrimination and
9 nonharrasment, and the rights of workers to assemble and choose
10 to bargain collectively.

11 (c) Thousands of workers are employed in sweatshop
12 conditions in the State of California, and Southern California has
13 been identified as the sweatshop capital of the United States.

14 (d) The state recognizes the rights of its citizens to information
15 and choice with regard to the expenditure of its tax dollars.

16 (e) The state has an interest in providing incentives for
17 responsible bidders.

18 (f) The state shall establish a “sweat-free” procurement policy
19 and code of conduct that ensures that apparel, equipment,
20 materials, and supplies purchased by the state or its agencies be
21 produced in workplaces free of sweatshop conditions.

22 SEC. 2. Section 6108 of the Public Contract Code is amended
23 to read:

24 6108. (a) (1) Every contract entered into by any state agency
25 for the procurement of equipment, materials, or supplies, ~~other~~
26 ~~than procurement related to a public works contract,~~ shall require
27 that a contractor certify that no ~~foreign-made~~ equipment,
28 garments, materials, or supplies furnished to the state pursuant to
29 the contract have been produced in whole or in part by *sweatshop*
30 *labor*, forced labor, convict labor, indentured labor under penal
31 sanction, abusive forms of child labor or exploitation of children



1 in sweatshop labor, or with the benefit of *sweatshop labor*, forced
2 labor, convict labor, indentured labor under penal sanction,
3 abusive forms of child labor or exploitation of children in
4 sweatshop labor. The contractor shall agree to comply with this
5 provision of the contract.

6 (2) The contract shall specify that the contractor is required to
7 cooperate fully in providing reasonable access to the contractor's
8 records, documents, agents or employees, or premises if
9 reasonably required by authorized officials of the contracting
10 agency, the Department of Industrial Relations, or the Department
11 of Justice to determine the contractor's compliance with the
12 requirements under paragraph (1).

13 (b) (1) Any contractor contracting with the state who knew or
14 should have known that the ~~foreign-made~~ equipment, *garments*,
15 materials, or supplies furnished to the state were produced in
16 violation of the conditions specified in subdivision (a) when
17 entering into a contract pursuant to subdivision (a), may, subject
18 to subdivision (c), have any or all of the following sanctions
19 imposed:

20 (A) The contract under which the prohibited equipment,
21 *garments*, materials, or supplies were provided may be voided at
22 the option of the state agency to which the equipment, materials,
23 or supplies were provided.

24 (B) The contractor may be assessed a penalty which shall be the
25 greater of one thousand dollars (\$1,000) or an amount equaling 20
26 percent of the value of the equipment, materials, or supplies that
27 the state agency demonstrates were produced in violation of the
28 conditions specified in paragraph (1) of subdivision (a) and that
29 were supplied to the state agency under the contract.

30 (C) The contractor may be removed from the bidder's list for
31 a period not to exceed 360 days.

32 (2) Any moneys collected pursuant to this subdivision shall be
33 deposited into the General Fund.

34 (c) (1) When imposing the sanctions described in subdivision
35 (b), the contracting agency shall notify the contractor of the right
36 to a hearing if requested within 15 days of the date of the notice.
37 The hearing shall be before an administrative law judge of the
38 Office of Administrative Hearings in accordance with the
39 procedures specified in Chapter 5 (commencing with Section
40 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

1 The administrative law judge shall take into consideration any
2 measures the contractor has taken to ensure compliance with this
3 section, and may waive any or all of the sanctions if it is determined
4 that the contractor has acted in good faith.

5 (2) The agency shall be assessed the cost of the administrative
6 hearing, unless the agency has prevailed in the hearing, in which
7 case the contractor shall be assessed the cost of the hearing.

8 (d) (1) Any state agency that investigates a complaint against
9 a contractor for violation of this section may limit its investigation
10 to evaluating the information provided by the person or entity
11 submitting the complaint and the information provided by the
12 contractor.

13 (2) Whenever a contracting officer of the contracting agency
14 has reason to believe that the contractor failed to comply with the
15 requirements under paragraph (1) of subdivision (a), the agency
16 shall refer the matter for investigation to the head of the agency
17 and, as the head of the agency determines appropriate, to the
18 Director of Industrial Relations or the Attorney General.

19 (e) (1) For purposes of this section, the term “forced labor”
20 shall have the same meaning as in Section 1307 of Title 19 of the
21 United States Code.

22 (2) “Abusive forms of child labor” means any of the
23 following:

24 (A) All forms of slavery or practices similar to slavery, such as
25 the sale and trafficking of children, debt bondage, and serfdom and
26 forced or compulsory labor, including forced or compulsory
27 recruitment of children for use in armed conflict.

28 (B) The use, procuring or offering of a child for prostitution,
29 for the production of pornography, or for pornographic
30 performances.

31 (C) The use, procuring or offering of a child for illicit activities,
32 in particular for the production and trafficking of illicit drugs.

33 (D) All work or service exacted from or performed by any
34 person under the age of 18 either under the menace of any penalty
35 for its nonperformance and for which the worker does not offer
36 oneself voluntarily or under a contract the enforcement of which
37 can be accomplished by process or penalties.

38 (E) All work or service exacted from or performed by a child
39 in violation of all applicable laws of the country of manufacture

governing the minimum age of employment, compulsory education, and occupational health and safety.

(3) “Exploitation of children in sweatshop labor” means all work or service exacted from or performed by any person under the age of 18 years in violation of more than one law of the country of manufacture governing wage and benefits, occupational health and safety, nondiscrimination, and freedom of association including the right to organize unions to bargain collectively.

(4) “State agency” means any state agency in this state and includes, but is not limited to, any school district, college, university, jail, prison, and law enforcement agency.

(f) (1) The state shall establish a contractor responsibility program, including a Sweatfree Code of Conduct, to be signed by all bidders on state contracts and subcontracts. Any state agency responsible for procurement shall ensure that the Sweatfree Code of Conduct is available for public review at least 30 calendar days between the dates of receipt and the final award of the contract.

(2) To ensure public access and confidence, the state shall ensure public awareness and access to proposed contracts by posting on the Internet and through communication to advocates for garment workers, unions, and other interested parties. The appropriate agencies shall establish a mechanism for soliciting and reviewing any information indicating violations of the Sweatfree Code of Conduct by prospective or current bidders, contractors, or subcontractors. The agencies shall make their findings public when it rejects allegations against bidding or contracting parties.

(3) Contractors shall ensure that their subcontractors comply in writing with the Sweatfree Code of Conduct, under penalty of perjury. Contractors shall attach a copy of the Sweatfree Code of Conduct to the certification required by subdivision (a).

(g) No public agency may enter into a contract with any contractor with respect to whom any of the following requirements are not met:

(1) Contractors and subcontractors in California shall comply with all appropriate state laws concerning wages, workplace safety, rights to collective bargaining, and nondiscrimination standards as well as appropriate federal laws. Contractors based in other states in the United States shall comply with all appropriate laws of their states and appropriate federal laws. For

1 contractors whose locations for manufacture or assembly are
2 outside the United States, those contractors shall ensure that their
3 subcontractors comply with the appropriate laws of countries
4 where the facilities are located.

5 (2) Contractors shall ensure that workers are paid at least a
6 nonpoverty wage and, where feasible, state agencies shall express
7 a preference for a living wage. “Nonpoverty wage” means a
8 national wage and benefit level above the poverty line as defined
9 by the United Nations. The state may use an index of purchasing
10 power parity for a foreign currency averaged over the calendar
11 year preceding the date of entering the contract in question. A
12 living wage is a “take home” or “net” wage earned during a
13 country’s legal maximum workweek, but not more than 48 hours.
14 A living wage provides for minimum basic needs defined as
15 housing, food, medicine, utilities, clothing, and children’s
16 education, of an average family unit divided by the average
17 number of adult wage earners.

18 (3) Workers shall not (A) be required to work more than the
19 limits on regular hours allowed by the law of the country of
20 manufacture or 48 hours per week, whichever is lesser; and (B) be
21 entitled to at least one day off in every seven-day period, as well
22 as holidays and vacations.

23 (4) All overtime hours shall be worked voluntarily. Workers
24 shall be compensated for overtime at either (A) the rate of
25 compensation for regular hours of work, or (B) as legally required
26 in the country of manufacture, whichever is greater.

27 (5) No person may be employed who is younger than the legal
28 age for children to work in the country in which the facility is
29 located. In no case may children under the age of 15 years be
30 employed in the manufacturing process. Where the age for
31 completing compulsory education is higher than the standard for
32 minimum age of employment, the age for completing education
33 shall apply to this section.

34 (6) There may be no form of forced labor of any kind, including
35 slave labor, prison labor, indentured labor, or bonded labor,
36 including forced overtime hours.

37 (7) The work environment shall, at a minimum, be in
38 compliance with relevant local, state, and national laws. If
39 residential facilities are provided to workers, they shall be safe and
40 healthy. Any garment contractor shall ensure that its direct

1 operations and those of any subcontractor keep and maintain
2 records documenting its health and safety programs on site (such
3 as facility and equipment inspections, workplace air samplings,
4 accident investigations, and employee training).

5 (8) There may be no discrimination in hiring, salary, benefits,
6 performance evaluation, discipline, promotion, retirement or
7 dismissal on the basis of age, sex, pregnancy, maternity leave
8 status, marital status, race, nationality, country of origin, ethnic
9 origin, disability, sexual orientation, religion, or political opinion.

10 (9) No worker may be subjected to any physical, sexual,
11 psychological, or verbal harrassment or abuse, including
12 corporal punishment. Every worker shall be treated with dignity
13 and respect.

14 (10) Contractors and subcontractors shall recognize and
15 respect the right to free association and collective bargaining. No
16 employee may be subject to harrassment, intimidation, or
17 retaliation. Contractors and subcontractors shall allow unions
18 freedom of access to employees and recognize unions of the
19 workers' choice.

20 (11) Female workers shall be provided equal pay and benefits,
21 equal treatment, equal evaluations, and equal opportunities to fill
22 positions with male workers. No worker may be forced to use
23 contraceptives or take pregnancy tests. No worker may be exposed
24 to chemicals, including glues and solvents, that endanger
25 reproductive health.

26 (12) Contractors and bidders shall list the names and
27 addresses of each subcontractor to be utilized in the performance
28 of the contract, and list each manufacturing or other facility or
29 operation of the contractor or subcontractor for performance of
30 the contract. The list shall provide company names, owners or
31 officers, addresses, telephone numbers, E-mail addresses, and the
32 nature of the business association.

33 (h) State agencies shall grant a preference in contracts for
34 competitive bids on appeal by firms whose production is based in
35 California, and the bid is not greater than 10 percent more than the
36 lowest bid by an otherwise responsible bidder.

37 SEC. 3. No reimbursement is required by this act pursuant to
38 Section 6 of Article XIII B of the California Constitution because
39 the only costs that may be incurred by a local agency or school
40 district will be incurred because this act creates a new crime or

1 infraction, eliminates a crime or infraction, or changes the penalty
2 for a crime or infraction, within the meaning of Section 17556 of
3 the Government Code, or changes the definition of a crime within
4 the meaning of Section 6 of Article XIII B of the California
5 Constitution.

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